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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------------------------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/645,226 | 08/21/2003 | Steve Lin | DES/1250.0030 | 7137 |
| 152 | 7590 | 07/01/2004 | EXAMINER | |
| CHERNOFF, VILHAUER, MCCLUNG & STENZEL 1600 ODS TOWER 601 SW SECOND AVENUE PORTLAND, OR 97204-3157 | | | SMALLEY, JAMES N | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3727 | |

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,226

Applicant(s)

LIN, STEVE

Examiner

James N Smalley

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/09/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the container and the circumferential lip must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Ostrowsky US 4,487,324.

Ostrowsky '324 teaches a container and closure, comprising a flip top (14), hinge (48), tear strip (66), threaded cap (20) and ratchet teeth (29).

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson US 6,530,493 in view of Uhlig US 4,533,058.

Anderson '493, fig.s 10 and 12, teach a container and closure, with a flip top cap (16A), tear strip (40), threaded cap (14A), and sealing flange (46) sealing a container circumferential lip.

Anderson '493 does not teach ratchet teeth, instead disclosing a tamper evident ring.

Uhlig '058 teaches it is known to provide a ratchet tooth connection between a threaded cap and associated container neck (see fig. 5). Examiner cites Official Notice that these two means of preventing tampering of a threaded cap are well known mechanical equivalents.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container closure assembly of Anderson '493, replacing the tamper evident ring with a ratchet tooth connection, motivated by the benefit of preventing access to the container. One having ordinary skill would have found it obvious to substitute a ratchet tooth connection for a tamper evident ring because these two means of preventing tampering with a threaded cap are art-recognized equivalents and it is within ordinary skill to substitute one well known tamper evident means for another.

6. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowsky US 4,487,324 in view of Wagner US 6,481,588.

Ostrowsky '324 teaches a sealing flange (30) to seal the circumferential lip of a container. However, the lip is disposed in the cap and not in the flip top (14).

Wagner '588 teaches it is known to provide a flip top cap with a sealing flange to seal the circumferential lip of a container.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure assembly of Ostrowsky '324 providing the sealing flange (30) on the container flip top, as taught by Wagner '588, motivated by the benefit of providing a wider dispenser opening. Further, such a modification is a mere change in the location of the sealing flange. It has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

| | |
|--------------|--------------|
| US 5,785,209 | US 4,919,286 |
| US 5,605,240 | US 4,807,768 |
| US 5,398,829 | US 4,711,363 |
| US 4,940,167 | US 3,817,416 |

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 9-7:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns


Stephen K. Cronin
Primary Examiner